MISCELLANY.

The Law's Delay.—A dispatch from Kansas City announces that the fourth trial of Dr. Hyde for the murder of Swope was postponed, at the request of the State, because of lack of funds and inability to get the witnesses together, and that two of the most important witnesses, the family physician of the deceased and his nurse, are dead.

It will be remembered that Dr. Hyde was charged with causing the death, not only of Swope, but of a number of other persons, whose lives stood between him and the large fortune of Col. Swope, by poisoning them with typhoid fever germs. Three trials and the expenditure of a vast sum of money leaves the matter just where it was many years ago, except that a large part and probably the most damaging part of the State's evidence has been wholly destroyed through the death of two witnesses and the remainder is, apparently, uncertain of production, because of the absence of other witnesses.

Under a system of sane legal procedure the evidence of a witness, given on a former trial, and reduced, by the aid of shorthand, to written form, would be available in a criminal case, as it is in a civil case, on proof that the witness has died since the former trial or has removed from the jurisdiction. But such is not the case. Our State constitutions all provide that the accused shall be "confronted with the witnesses" against him, and our courts, with studious care for the interests of the criminal, long ago decided that it was not enough that the accused should be confronted once with the adverse witnesses, with the opportunity of cross-examining them and then impeaching them, but that the witnesses must be produced again and again as the technical web spins out into successive trials, until, by some fortunate miscarriage of the legal machine, a conviction is obtained which proves impervious to the attacks of reviewing courts. Of course, the accused would receive all the benefit intended to be conferred on him by this constitutional provision, if the evidence submitted to the first jury were submitted to succeeding juries, in cases where, through death or the removal of the witnesses beyond the jurisdiction of the court, it is impossible to produce the witness. To give such a construction to the provision would have been strictly consistent with its plain meaning, as well as with its spirit. It is the accused, and not the jury trying him, who is entitled to confront the witness, and he has had all the benefit of that privilege when the witness has once testified and his testimony has been preserved.

The courts, construing the provision in question as they have construed it, have rendered it impossible for the legislature to remedy

the wrong occasioned by the death of a witness. But they are not responsible to as great a degree for the wrong occasioned by the application of the provision to the case of a witness who removes from the jurisdiction after testifying at the first trial. In such a case, the states have it in their power to provide for the extradition of witnesses to other States, where the case is criminal and their depositions cannot be taken in the State to which they have removed. Some States have so provided, where a similar statute exists in the State requesting the extradition. Such statutes exist, we believe, in New York, Pennsylvania and Massachusetts, and there is no reason why they should not exist in every State. If any question has been raised as to the constitutionalty of these statutes, it has been decided in favor of the statutes. As a consequence, if a witness to a crime committed in one of these States is found in one of the others, he can be brought back to testify at the trial.

Why have not similar statutes been enacted in more of the States? Principally because it is not the business of anyone in particular to scan the statute books of other States, with a view to adopting desirable reforms in procedure. Lawyers are content to practice the law as they have learned it, and the judges seem to consider that they have more than enough to do in administering it as it stands. As we have more than once pointed out, although the law makes it the duty of the subordinate courts to call the attention of the Supreme Court to defects which they may discover in the law and of the latter body to make recommendations to the legislature as to its amendment, there is hardly a pretense of obedience to this direction of the statute. Is it because that all the judges are convinced that, as Lord Coke said, the law is the perfection of wisdom?—National Corporation Reporter.

Farmer Is Tricked by Crafty Dealer.—Substantially following the language of the Supreme Court of Missouri in Stonements *v.* Head, 154 Southwestern Reporter, 108, the facts of that case are: Plaintiffs, George and Margaret, husband and wife, resided with their six children on a little farm in Illinois, which, with a modest supply of farm implements, etc., was their all. In that regard, Nathan's one ewe lamb allegory is apposite. They seemed to belong to a class that should be well beloved (because, as a great soul once suggested, God has made so many of them), viz., straightforward, simple-minded, hardworking, trustful, and confiding people, members of the church, and alive to ethical work, including temperance. Soon George got it into his head that a larger farm could be profitably worked while he had his large family in hand, thereby making hay while the sun shone. Old Polybius says, sourly, "Man is the most gullible of all animals." Thirty miles away, in the same county and a stranger to

them, was a man who seemingly lived by his wits, a trader and real estate agent named Head, who had got on in the world as such. Among others, he owned a worn-out, nonproductive farm in Missouri which had a bad reputation and was heavily incumbered. In 1908, Head traded his Missouri farm to plaintiffs for their Illinois farm. Now, the master, the broad daylight, fact in the case is that plaintiffs were tricked out of their farm by Head through his fraudulent representations to the effect that the soil of his farm in Missouri was as good and as productive as theirs, and by craftily winning their confidence. In short, if plaintiffs' testimony is to be taken as true, Head, in a long conversation descriptive of the farm, told them no truth whatever, and yet posed in the George Washington role of telling no lies, especially about cherry trees. There is another matter of significance, a most humiliating one, viz., shortly after his appearance at plaintiffs' home in Illinois it fell out that Head discovered that plaintiffs were church people, interested in Sunday schools and temperance work. Observe what followed. Was Head interested in that line? Precisely, and very much so. In the great controversy of Good *v.* Evil he was enlisted on the side of temperance, Sunday schools, and churches. They had a good friendly chat about that. They were warring in the same cause. We fear, we very much fear, that in all this, Mr. Head "stole the livery of the court of Heaven to serve the devil in," thereby weaving a net for his neighbors' feet. Presently dinner was announced, and Head, having, prior to that by the tone and thread of his discourse, admitted his qualifications for that pious office, was invited to say grace. Looking fore and aft at the whole transaction, we have reason to remark that no doubt he said it as unctuously as the middle member of the firm of Quirk, Gammon & Snap would have done under like circumstances. For what is the rule of construction on hypocrisy, except "By their fruits ye shall know them." Having eaten salt at their table (which creates an obligation even the Arabs of the desert are said to respect), he assured them that he "would not tell a lie for his farm" or "for the world." Oh, Deceit (we speak in judicial sadness), thy name is Head! It was under such circumstances, and after worming his way into the esteem, and sowing seeds of confidence in the bosoms of these unsuspecting people, that this trade was made on Head's representations. Can equity grant relief? True, at root, the object of all trading is gain, and, while puffing and dealer's talk is allowable, yet there is a boundary that may not be crossed. The vehemence of the master passion, gain, must be cooled and curbed by the law; for not only is "the love of money the root of all evil," but another wise man, who summed up ultimate truths in grave and short sentences, saith thus: "As the nail sticketh fast between the joining of the stones, so doth it stick close between buying and selling" (Eccles. xxvii, 2). Relief for plaintiffs is decreed.